

CRIMINAL LAW
BAR PREP LECTURE
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DO

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|-----|---|----|
| 1. | Discuss ONLY AZ law. | 1. |
| 2. | Irac. | 2. |
| 3. | Follow the call. | 3. |
| 4. | Look for crimes <i>and</i> defenses. | 4. |
| 5. | Know the elements of the <i>most likely</i> crimes and defenses (prioritize). | 5. |
| 6. | If you don't know the elements of a particular crime or defense, use your common sense. | |
| 7. | Look for dead bodies. | |
| 8. | Look for felony/murder. | |
| 9. | Attempt to find attempt. | |
| 10. | Look for multiple <i>participants</i> . | |
| 11. | Look for issue <i>combinations</i> . | |

DON'T

Mention common law crimes and defenses.

Mention the MPC.

Discuss policy, purposes of punishment, or the philosophy of the Criminal Law.

Get hung up on statutory construction.

Get hung up on the elements of crimes that are unlikely to appear on the exam.

Issues in Arizona Criminal Law Essay Questions
Feb. 2000 - July 2007 (16 exam questions)

"Too many issues, too little time. "

	No. of exams
<u>Crimes</u>	
<hr/> Homicide	12
Felony murder	10
Reckless/negligent homicide	7
Premeditation	5
Heat of passion manslaughter	1
<hr/> Causation	9
<hr/> Attempt	11
<hr/> Multiple crime participants or defendants	
Accomplice liability	11
Conspiracy	7
Solicitation	3
<hr/> Other crimes	
Aggravated assault	8
Robbery	5
Burglary	3
Criminal damage	2
Theft	2

Other crimes: sale of drugs, possession of drugs, trespass, arson,
resisting arrest, misconduct involving weapons, forgery,
identity theft

One time each

Defenses

Insanity	5
Attempt - impossibility	5
Duress	4
No voluntary act	3
Addiction status (not conduct)	3
Self defense/justification	2
Attempt/conspiracy - renunciation	2
Mistake of fact/law	1
Entrapment	1

FELONY MURDER

- Acting alone, *or with one or more other persons* (Defendant can be an *accomplice*)
- Defendant commits or *attempts* to commit (an *attempted* robbery is all that's necessary)
- Any one of a long laundry list of felonies
 - On the bar exam, it is *almost always robbery*. One year it was burglary. Another time it was arson. Other possibilities = kidnapping, escape, or drug sale over statutory amount.
 - Aggravated assault is *not* on the list.
- In the course of the offense and in furtherance of the offense, *or in immediate flight*,
- *Anyone* causes the death *of anyone*.
 - As long as the felony is the proximate cause of the death, it doesn't matter who causes the death of whom.

FELONY MURDER ISSUE COMBINATIONS

Typical fact pattern

- **A & B** agree to commit a robbery, typically at a bank or convenience store.
- A assure B there will B no.violence (sometimes hiding from B that he has a gun).

- Sometimes, B participates because he is afraid of A.
- The robbery attempt is foiled by an unforeseen circumstance over which the robbers have no control.
- During the robbery, B decides that he wants to withdraw from the enterprise.
- Someone dies in a bizarre or unforeseen way during the robbery or when one of the robbers is fleeing.

Elements of crimes/bases of criminal liability

- Felony murder
- Conspiracy
- Accomplice liability
- Attempt
- Extreme indifference murder/Reckless manslaughter/Negligent homicide
- Causation
- Robbery
- Aggravated

assault **Defenses**

- Renunciation of attempt/conspiracy
- Impossibility of attempt
- Duress

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Accomplice liability (Defendant does not engage in the criminal conduct himself):

- Defendant is not a cop.
- Defendant does something to aid or facilitate the crime.
- Defendant intends to facilitate the crime.

Conspiracy (Defendant does not engage in the criminal conduct himself)

- With the intent to aid or participate in the crime,
- Defendant agrees with one or more persons to commit the crime.
- An overt act in furtherance, by at least one of the co-conspirators (except if the crime is a violent crime).

Solicitation (Defendant does not engage in the criminal conduct himself)

- With the intent that the crime will be committed,
- Defendant solicits another to commit the

crime. Attempt

- With the culpability (mens rea) for the crime to be committed,
- Defendant intentionally engages in conduct that:
 - is any step* in a course of conduct leading to the crime,
 - or* would be the crime if the circumstances were as Def believed them to be,
 - or* aids another in trying to commit the crime.

Causation

- "But for" (actual) cause [Ex.: Def shoots vic, who is already dead - no murder, only att. murder], *and*
- proximate cause (foreseeability) [Ex.: customer dies of heart attack during robbery of a store].

Premeditated murder

- Defendant intentionally or knowingly causes death
- Culpable mental state formed sufficiently in advance to permit reflection (can be seconds).

Robbery

- Take the property of another, by force or threat of force
- Intent to coerce surrender or prevent resistance.

Aggravated assault (many ways of committing, but only three have appeared on bar exam)

- Defendant commits assault (a misdemeanor) by
 - at least recklessly causing injury,
 - or intentionally places another person in reasonable fear of imminent injury
 - or knowingly touches another with intent to injure or provoke.
- The assault is aggravated by one of the following:
 - The injury is serious physical injury;
 - The defendant uses a deadly weapon (i.e., brandishing or pointing a gun); *or*
 - The victim is a cop (resisting arrest scenario).

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Duress

Defenses (most likely to appear on exam)

- Defendant reasonably believed he was coerced by *imminent* threat of physical

force.

- A reasonable person would not have resisted.

- **BUT DURESS IS NOT A DEFENSE IF:**

The crime involves death or serious physical injury, *or*

Defendant recklessly put himself in the situation in which he was coerced.

Insanity (Guilty except insane)

- Defendant had severe mental disease or defect, such that
- He did not know his criminal act was wrong.
- **BUT INSANITY IS NOT A DEFENSE IF:**
 - Voluntary intoxication
 - Defendant is suffering from withdrawal from alcohol or drugs
 - Defendant knows it is wrong, but cannot control his conduct.

Addiction

- Unconstitutional to punish for addiction itself, *but*
- No constitutional problem to convict def for *conduct* that results

from addiction. Renunciation (attempt or conspiracy)

- Withdrawal must be voluntary and complete (not because of fear of getting caught).
- Defendant must report crime to police or make reasonable

effort to prevent it. Impossibility (attempt)

- Never a defense (regardless of legal/factual impossibility).

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7/06

QUESTION 12 -----

Johnny, a methamphetamine addict living in Yuma, Arizona, was in dire need of money to get the drugs he craves. He convinced Frankie, his girlfriend, to help him rob the local Kwickie Mart convenience store. Johnny assured Frankie that no one would be hurt, but told her he needed to carry a gun so the clerk would respond to his demand for cash.

They entered the store and Johnny cased the place while Frankie tried to distract Eddie, the clerk. Unbeknownst to either, Detective Slipowitz from the Yuma Police Department, had been in the store's back office talking to the owner about a recent rash of property crimes in the area. When he reentered the front of the store, Slipowitz saw Johnny at the counter with his gun drawn, and the clerk with his hands up. Frankie was standing by the door, keeping watch. Slipowitz yelled "Freeze!". Frankie cried out, "I'm outta here! I want nothing to do with this!" and ran from the store. Johnny spun around, with his gun facing Slipowitz, and Slipowitz fired a single shot. Johnny's arm was only grazed, but the bullet hit the cash register and ricocheted, striking Eddie in the head. Eddie's injury was fatal.

Frankie and Johnny were both apprehended and charged. Johnny argues that his actions were driven solely by his addiction, and that it would be unconstitutional to punish him for his status as an addict. He also argues that his addiction is a form of insanity, and that because he cannot control his impulses or his actions, he should not be held criminally responsible. Frankie argues that she went to the store only because she is afraid of Johnny, who has beaten her in the past. She maintains that she is not criminally culpable because she never wanted to participate in the crime and left the store before any criminal act was completed.

Discuss all the charges that may be brought against Frankie and Johnny, the basis for those charges, and the likely success of each defendant's suggested defenses.

END OF QUESTION 12

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QUESTION 2

7/23

Ace Autos, Inc. sells used cars from a lot enclosed by a wire fence. One night, after the gate to the lot is locked for the night, Smith, a fifteen-year-old, climbs over the fence intending to steal hubcaps from a car on the lot to give to his older brother as a birthday present.

As Smith is removing the hubcaps, he is surprised by two security guards, Jones and Williams, who have become aware of Smith's activities. As Jones attempts to apprehend Smith, Smith attempts to escape and pushes Jones away. The push causes Jones to lose his footing, fall and hit his head on the hood ornament of a nearby car. The ornament pierces Jones's head, killing him instantly.

Realizing that Jones is dead and in an attempt to eliminate Williams as a witness, Smith removes a loaded pistol he is carrying, points the gun at Williams and pulls the trigger. The gun's safety, however, is on and it does not fire. Smith removes the safety and again points the gun at Williams, but decides against pulling the trigger because he really does not desire to kill Williams. Smith hands the gun to Williams, who takes Smith into custody.

Discuss fully the crimes with which Smith may be charged and any defenses he may have to those charges, including whether he may be charged as an adult.

END OF QUESTION 2

7/24

QUESTION 1 -----

Joe Driver and Johnny Friend are close buddies, and work together at the Arizona Monsoon Chasers in Phoenix, chasing summer monsoon storms in their storm tracker vehicles. Late one night, Joe Driver, in a severely intoxicated state, knocks on the door of Johnny Friend's home. Driver awakens Friend from a sound sleep and asks Friend if Friend will give Driver a ride home. Recognizing that Driver is intoxicated, Friend tells Driver that he (Friend) is too sleepy to do anything himself to assist but offers Driver the keys to Friend's car so that Driver can take himself home. Driver accepts the offer, takes the keys from Friend and drives away in Friend's car. Minutes later, Driver careens off the road and crashes into a pedestrian, killing her instantly.

Discuss the following questions:

1. With what homicide offense or offenses should Joe Driver be charged?
2. Could Joe Driver have a successful intoxication defense for the

charged offense or offenses?

3. Is Johnny Friend guilty as an accomplice to Joe Driver's homicide offense or offenses?
4. If Johnny Friend is charged as an accomplice, could he assert a successful defense that giving the keys to Joe Driver in his sleepiness exculpates him from criminal liability?

END OF QUESTION 1